

Moving into the Future: Updating Existing Regulations to Make Way for Innovation in the Transportation Sector From Passenger Stage Coaches to Transportation Network Companies



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NARUC Winter Committee Meetings, Washington, D.C.,
February 15, 2016*



Passenger Stage Corporations Then and Now

California Public Utilities Commission

- Successor agency of the California Railroad Commission
- Established in the California Constitution in 1911
- Jurisdiction over rail safety, passenger stage coaches, transportation network companies, Investor Owned electricity, natural gas and water utilities, telecommunications, common carrier gas and oil pipelines
- Regulating passengers over public highways since the Auto Stage and Truck Transportation Act of 1917

Charter Party Carrier Status

A charter party carrier is

- "... every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state." (P.U. Code §5360)
- "... the commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things... necessary and convenient in the exercise of such power and jurisdiction." (P.U. Code §5381)
- P.U. Code § 5401 prohibits charter-party carriers, with exception of round trip sightseeing and school bus service, from charging individual fares
- P.U. Code § 5386.5 & CPUC Gen. Order 157-D prohibit charter-party carriers from acting as taxis

Passenger Stage Corporation

California Public Utilities Code 226(a):

- **Passenger stage corporation** includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this state between fixed termini or over a regular route except those, 98 percent or more of whose operations as measured by total route mileage operated, which are exclusively within the limits of a single city or city and county, or whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and that institution.
- PSCs are required to file tariffs with rates, schedules and terms of service; includes on-call airport shuttles where one fixed terminus is an airport.

Passenger Stage Corporation (2)

"The minimum requirements for ... protection against liability shall not be less than the requirements which are applicable to operations of carriers conducted pursuant to the federal Bus Regulatory Reform Act of 1982."

- ***However, for vehicles designed to carry not more than eight persons, including the driver, the commission shall not require protection against a total liability of the corporation on account of bodily injuries to, or death of, more than one person as a result of any one accident in an amount exceeding seven hundred fifty thousand dollars (\$750,000).***

CPUC Creates New Regulatory Class

Decision 13-09-045 in Rulemaking 12-12-011

Decision Adopting Rules & Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry

CPUC declares jurisdiction over Transportation Network Companies (TNCs) as a charter party carrier:

“... a TNC is defined as an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides transportation services for compensation using an online-enabled app or platform to connect passengers with drivers using their personal vehicles.” (D. 13-09-045)

- TNCs do not meet the rideshare exemption (P.U. Code §5353(h))

New Classification: TNC

- Technological shift of dispatching device (e.g., smart phone) does not limit jurisdiction. (CPUC D. 13-09-045)
 - “We deem it is inconsistent with our grant of authority over transportation services to be barred from regulating a transportation service provided by TNCs based on the means of communication used to arrange the service.”
- Assembly Bill 2293 addressed TNC insurance coverage and confirmed CPUC jurisdiction.
 - CPUC in D.14-11-043 modified D.13-09-045 per AB 2293 to tighten insurance provisions for TNCs.
 - TNC cannot rely on the TNC driver’s personal auto insurance policy.

Ride-pooling and fare-splitting -

- In May, 2014, a company called Hitch applied for a TNC permit. Hitch proposed to pick up multiple passengers to share a ride to destinations along the same route. The Commission denied the application due to the P.U. Code §5401 prohibition against charging individual fares. Hitch was bought by Lyft later that September.
- Shared rides are now being offered by all major TNCs.
- The Commission advised the TNCs of the §5401 prohibition, and examined the issue through its regulatory proceeding

New Wrinkles in Old Fabric (1)

- Passenger State Corporations:
- Leap Transit applied for a PSC certificate. Leap's first application would have likely been denied due to an exemption for transportation that is 98% within the boundary of a city or city and county, and San Francisco is a city and county;
- Leap Transit offered tech friendly bus service -- coffee and pressed juice bar;
- Leap removed wheel chair lifts from their buses;

New Wrinkles in Old Fabric (2)

- Leap Transit amended its application to include transportation outside of San Francisco;
- Leap's PSC certificate application was approved. This started the clock on Leap Transit fulfilling PU Code § 1031 et sec., including submitting its insurance, having the California Highway Patrol inspect its terminal and vehicles, submit its drug and alcohol testing program, and submitting a letter of acceptance of the PSC Certificate;
- Leap Transit began operating within San Francisco before its PSC compliance filings were submitted;
- The CPUC ordered Leap Transit to stop operating until all the requirements were met;
- Leap filed for bankruptcy in fall 2015, auctioning its luxury buses.

New Wrinkles in Old Fabric (3)

• **CPUC Rulemaking 12-12-011 Phase II**

- Issues under review include,
 - Whether to require TCP vehicle 19-point inspection every 12 months or 50,000 miles, whichever occurs first, with associated documentation and disclosure.
 - Whether driver consent is necessary for disclosure of insurance coverage, criminal background check information, licenses and driving records, etc.
 - Whether there should be special requirements for TNCs when transporting unaccompanied minors, including finger-printing, or across-the-board fingerprinting of all TNC drivers.
 - Whether insurance liability coverage of at least \$750,000 is needed.
 - Whether to require visible trade dress on both front and rear of vehicle.
 - Whether to allow leased personal vehicles for TNC use.
 - Whether to require certification and documentation of how rates are calculated.
 - Whether to approve fare-splitting operations.

Future Issues

Legal Issues: An Overview

- New technology highlights long standing issues,
 - Jurisdiction
 - Liability
 - Insurance
 - Employee or independent contractor
 - Privacy
 - Anti-trust
 - Compliance with state and local laws and regulations
 - Environment – California Environmental Quality Act (CEQA)
 - Intellectual Property

Palsgraf v. Long Island Railroad Co.

248 N.Y. 339, 162 N.E. 99 (N.Y. 1928)



<https://www.youtube.com/watch?v=LDS3f2lp6u4>

Hypo

- TNC without a passenger, application is broadcasting driver/vehicle as available for hire.
- TNC collides with another car.
- Other car spins & hits fire hydrant.
- Fire hydrant cover flies hundreds of feet, hits a pedestrian at the other end of the block.
- Pedestrian breaks her leg.
- Who's liable?
 - What if TNC local manager emails drivers daily events information?
 - If accident happens near location mentioned in daily events calendar, does that effect liability?

Self-Driving Vehicles

- How do self-driving vehicles affect legal issues:
 - Liability? Jurisdiction? Insurance? Licensing?
- Who is the “driver” in a driverless car for purposes of regulation, liability, insurance, and privacy?
 - Owner of vehicle? Passenger?
 - TNC certificate holder if driverless car is used to offer TNC services?
 - Maker /Operator of software?
 - Developer?
 - Licensee?
 - Maker of “hardware”?
 - Who carries insurance?
 - Factors to insure?
 - Who is licensed to “drive”?



Autonomous Vehicles & Self-Driving Vehicles

- New Legal Issues:
 - Is a licensed driver required in a “driverless” car?”
 - Any license or insurance required for passengers?
 - Access and sharing of passenger data?
 - Terms of service & scope of contract?
 - *Internet of Things & Internet of Dings* - the unpredictable: people, events, bicyclists, mother nature (deer, birds, flat tires, black ice)?
 - When to reboot? When to upgrade software & firmware? Who reboots? What if reboot fails and car is disabled suddenly?
 - Passenger overrides route “car” chooses – liability?
 - Navigating road obstacles, changes in driving conditions
 - Maps / navigation issues / Loss of signal to car

- **Google's Self-Driving System (SDS)**
- "... the SDS is actually driving the vehicle."
- Conventional driving controls are removed from the vehicle.
- No human override: Human intervention "could be detrimental to safety because human occupants could attempt to override the SDS's decisions."
- "... an item of motor vehicle equipment, the SDS, is actually driving the vehicle."

Google's Self-Driving Vehicle

Google's Self-Driving Vehicle

- National Highway Traffic Safety Administration (2/4/16)*:
- "... defining the driver as the SDS... does not end the inquiry...."
- "... interpreting the term 'driver' in a manner that Google has requested does not necessarily change the requirements of the regulation or otherwise resolve the issue Google seeks to address."
- "Once the SDS is deemed to be the driver for purposes of a particular standard or test, the next question is whether and how Google could certify that the SDS meets a standard developed and designed to apply to a vehicle with a human driver."

• [*http://isearch.nhtsa.gov/files/Google%20--%20compiled%20response%20to%202012%20Nov%20%2015%20interp%20request%20--%204%20Feb%2016%20final.htm](http://isearch.nhtsa.gov/files/Google%20--%20compiled%20response%20to%202012%20Nov%20%2015%20interp%20request%20--%204%20Feb%2016%20final.htm)

Autonomous Vehicles *as* Transportation Network Carriers and Passenger Stage Coaches?

- Do shared rides for hire invoke Passenger Stage Coach federal and state laws and jurisdiction?
- Might TNCs seek to use Autonomous Vehicles?

Continuing need to address regulatory framework and legal issues to promote safety, and reliability while encouraging innovation, economic growth.

Thank you!

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